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64/09/22 Defendant's Bill of Exceptions - part 4

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A Yes.

Q In what capacity?

A As a printer.

Q As printer do you belong to any type of union?

A Yes.

Q What union?

A Printers' Union on 18th and Superior, between Superior and Payne, 1590 -- I don't know the address.

Q How old were you when you started on that job in '53?

A 16.

Q How old were you when you left?

A 24 or 25.

Q Are you presently employed anywhere?

A No, -I am not.

Q Who do you live with?

A My mother.

Q Now, calling your attention to October 31, 1963 -- before we go into that, have you ever been arrested and convicted of a crime either against the State of Ohio or the Federal government?

A I have never been arrested nowhere for anything.

Q Now, on October 31st what time did you get downtown that day?

A It was early. It was before -- it was about 11:00 o'clock.

Q What was your reason for being downtown?

A I was looking for employment at different places.

Q Were you able to find any employment that day?

A No, I wasn't.

Q Now, did you see John Terry that day?

A Yes, I did.

Q Where did you see him?

A On Ninth Street, between Prospect and Euclid.

THE COURT: Can we present each particular identified item separately without presenting the entire exhibit?

MR. STOKES: Okay, Judge.

Q Showing you for purposes of identification State's Exhibit 1, and then further showing you what is marked for purposes of identification State's Exhibit 1-A, I will ask you if you saw these exhibits on October 31, 1963.

A Yes.

Q Where did you first see these two exhibits?

A Between Euclid and Prospect, by Halle's or Higbee's -- Halle's.

Q Where with relation to Halle's?

A Well, I was going from Euclid to Prospect, and I found something. I didn't know what it was until I opened it up, and found it, a bag, and inside the bag was a plastic bag, and inside the plastic bag was two pistols.

Q Now, was it just laying out there on the street or --

A No.

Q Or exactly where was it?

A Well, there was a stop sign going through between Euclid and Prospect. There is a stop sign to the right up real high. There is a little cut-out, and it was down on the ground floor, and the reason I ran -- I didn't run, it was raining, and I was trying to get out of the rain, and I stepped back there while some cars were coming, and this is how I come upon the package.

Q Upon finding this package you learned then that there were two pistols in it?

A Yes.

Q What did you do if anything with the package?

A I put both the pistols in my pocket.

Q What were you wearing that day?

A Overcoat and suit coat.

Q Now, when you found these items were you alone or with someone else?

A I was with someone else.

Q Who were you with?

A John Terry.

Q And you say you put both guns into your pocket?

A Yes.

Q Then what did you do?

A I had my gloves and the two pistols in my pocket, and my pockets were bulging, and I gave one of the pistols to Terry to put in his pocket.

Q Did he take it?

A Yes.

Q Then what did you do?

A I started up Prospect, and Huron, Prospect, I started up, and I met a fellow that I knew and I asked him a few questions pertaining to the pistols, like where could I get rid of them or sell them or pawn them.

Q Who was this fellow?

A Karl Katz.

Q Was Terry with you when you were talking with Katz about selling the guns or pawning them?

A Yes.

Q Now, were you and Terry ever at the corner of Huron and Euclid that day?

A Yes.

Q What were the two of you doing while you were there?

A Karl wanted to see them but he didn't want to see them right there on the corner and I started down the street, down Prospect, and he crossed the street, he jay-walked across the street, Karl did. He said he would look at them down the street.

See, he told me a place where I might be able to paw

them on Prospect, which is a loan place on 4th and Prospect.

I started off with them that way and then I came back to the corner where Terry was standing, and then I proceeded down Euclid Avenue where I met Karl to show him the pistol, and I was getting ready to show Karl the pistol when the arresting officer walked up.

Q Now, there has been testimony in this case with respect to you leaving Terry and then coming and looking in some windows, coming back to Terry, Terry doing the same thing; now, had this occurred then?

A Yes.

Q Well, what were you looking at or for when you went over to the stores?

A Well, I wasn't looking for anything. I stopped. I was on -- I started down the street and I came back to get Terry you know. I walked back up on the corner, and at this time, Karl came across the street, and Terry said he was going to put his piece somewhere, because he didn't want to keep walking with it on his person.

He started down the street, you know, and Karl said he is going down a place where we can look at it, where he can look it. This was the place on Euclid.

Then Terry came back to where I was at and we both started down -- Karl Katz was in front of us, and we were following him down to where we got to Zucker's to show him,

you know, what we had.

Q After you got in front of Zucker's what happened?

A Well, I took my pistol out of my pocket. I was standing next to Karl to show it to him and as soon as I get there or about, you know, a few seconds after I was standing there, that's when the officer walked up.

Q When he walked up what happened?

A I put the pistol back in my pocket, and he said, he started to say something to Terry, as far as I know, what he did, there was a little scuffle. It wasn't no -- it wasn't fighting or anything, it was a scuffle, because he had his hand in Terry's inside overcoat pocket, and he was trying to get something out of the pocket. He was trying to get the pistol out of his pocket.

Q Did he get the pistol out?

A No. He didn't get the pistol out until he got inside the store, and he had the whole coat -- he had the coat and all when he took the pistol out.

Q This is Terry's coat that he had?

A Yes.

Q How did you happen to go into Zucker's?

A He told us to go in.

Q What happened after you got inside of Zucker's?

A We stood up right to the front, to the showcase, and faced the wall, and he searched me next, and he searched Karl

Katz.

Q I want you to step down for a moment, and go over to that wall I am pointing to, and describe the manner in which you were up against the wall, show us now you were up against the wall.

A I was standing up like this.

MR. STOKES: May we have the record show that the witness has faced the north courtroom wall, and that he has raised both arms.

THE COURT: Is this the north wall?

THE WITNESS: This is the east wall.

MR. PAYNE: The east wall.

MR. STOKES: That he had both hands extended upward and outward towards the wall.

Is that all right, Mr. Payne?

MR. PAYNE: Yes, so agreed.

Q All right, take the stand again. Then what happened after you were up against the wall as you have described?

A Then he told someone to call the wagon. We stood there until the wagon come, and he put handcuffs on us and took us out to the wagon.

Q Did the officer take your gun from you, the one that you had in your pocket?

A Yes, my outside coat pocket.

Q Where were you standing when this was done?

A In the store, facing the counter.

Q Before the gun was taken did he do anything to you?

A No.

Q How did he learn there was a gun in your pocket?

A He went, you know, whatever you call it, I don't know what you call it.

Q I don't know. I want you to tell us.

A He patted me down and found a pistol in my outside coat pocket and took it.

Q Did he ever say to you that you are under arrest, or words to that effect?

A Not to my knowledge, no.

Q You say you heard him order a wagon?

A Yes.

Q Was this before he took the gun from your pocket or after he took the gun from your pocket?

A This was after he searched everyone.

Q By everyone whom do you mean?

A Terry, myself and Karl. Karl was the last one to be searched.

Q Now, you were taken to the police station that day?

A Yes.

Q And do you know what charge if any was placed against

you?

A Well, we weren't charged right off. We were held for investigation.

Q How long were you held for investigation?

A I really don't remember. It was overnight, you know. It wasn't 72 hours. It was, before we were charged, it was the next day some time.

THE COURT: Why do you say
72 hours?

THE WITNESS: Beg pardon?

THE COURT: Why do you say
72 hours?

THE WITNESS: Why do I say it?

THE COURT: Yes, what brings
to your mind the 72 hours?

THE WITNESS: Well, that's how
long you are supposed to be held for investigation.

THE COURT: Proceed, Mr. Stokes.

MR. STOKES: All right, your
Honor.

Q The period that you were under investigation, did you have occasion to request of anyone the right to make a telephone call?

A Yes.

Q Who did you ask?

A The fellow with the keys, the turnkey.]

Q Were you permitted to make a phone call?

MR. PAYNE: Now I am going
to object at this time, your Honor, unless we
identify the person in some kind of way.

THE COURT: I believe he
has identified him by saying the turnkey.

MR. STOKES: You mean you have
got to know his name?

MR. PAYNE: I abide by the
Court's ruling.

THE COURT: You will have
a chance to cross-examine him in that direction.
Go ahead.

Q Were you permitted to make the phone call?

A No.

Q Whom did you want to call

A Well, first I was going to call my people and let them
know where I was at.

Then I was going to call a lawyer to try, you know, a
lawyer or bondsman.

Q Were you ever permitted to make a call?

A No.

Q Not ever?

A When I was charged, after I was charged, yes.

Q That is what I am asking you.

A Yes, after I was charged.

Q You say after you were charged?

A Yes.

Q After that, were charged with what?

A Carrying a concealed weapon.

Q Until you were charged with carrying a concealed weapon, while you were under investigation, did you see anyone other than police personnel?

A No.

Q Are you a stick-up man?

A No, I never stuck up anyone.

Q Have you ever stuck up anyone or any place?

A No.

Q Were you on October 31, 1963, when you were standing in front of the Sheriff's office in the vicinity of that building looking for a job for the purpose of obtaining a job?

A No.

Q Do you remember Mr. McFadden coming up to the jail to talk with you the following day?

A Yes.

Q Before you had any conversation with him up there that morning were you told by him that you had a constitutional right not to make any statements against yourself?

A Would you say that again?

Q Directing your attention to having a conversation with Detective McFadden up in the jail that morning, and I am asking you before he began talking with you up there in the jail did he advise you that you had a constitutional right not to answer any of his questions?

A No.

Q Did he at any time advise you that you had the right to see a lawyer before you made any statements?

A No.

Q Before October 31, 1963, had you ever seen State's Exhibit 1 and 1-A before in your life?

A No.

Q Do you have any knowledge at all as to whether or not that gun will shoot?

A I don't know.

Q And what was your intention to do with that gun that day?

MR. PAYNE: Objection.

THE COURT: Objection sustained.

MR. STOKES: You may examine.

[CROSS-EXAMINATION OF RICHARD D. CHILTON

By Mr. Payne:]

Q Mr. Chilton, you were arrested some time in the afternoon of October 31, 1963?

A Yes.

Q Then you were conveyed to the police station next door, is that correct?

A Yes.

Q Then you remained there in jail all that night, is that correct?

A Uh-huh.

THE COURT:

Speak up.

A Yes.

MR. STOKES:

You have to

answer.

A Yes.

Q Next morning you talked to Mr. McFadden?

A Yes.

[Q Now, you indicated that you asked someone to make a telephone call, is that right, the turnkey?

A Yes.

Q When did you ask him?

A That morning.

Q That morning?

A Yes.

Q Before or after you saw Mr. McFadden?

A Before.

Q What did he say to you, the turnkey, when you asked him?

A He said something about a certain color slip, I think it was a pink slip or something. He said I don't have a pink slip, and I can't make no call, whatever this means. I don't know what it means.

Q Did you inquire about the slip further?

A He didn't talk to me that much.

Q What else if anything did he say to you?

A He said I couldn't make no phone call.

Q Unless there was a slip?

A Unless there was a slip or a charge or something, I had to be charged to make a phone call.

Q In other words, he didn't say to you outright that you couldn't make a call, but that you had to have some kind of slip, is that correct?

MR. STOKES: Objection.

THE COURT: Read that question.

(Last question was read by the reporter.)

THE COURT: He may answer if he knows.

MR. STOKES: Judge, my objection, if your Honor please, is to the prosecutor making

an interpretation and basing a question upon interpreting it.

He is saying, "In other words," and he is setting forth his statement.

I have no objection to questions and answers, but this is clearly objectionable.

THE COURT: I understand the question could be put a little more appropriately, but if the witness understands the question he may answer.

Do you understand the question?

THE WITNESS: Yes.

THE COURT: All right.

A He said I had to be charged before I could make a phone call.

Q And this was before Mr. McFadden talked to you?

A Yes.

Q Then how long after that did Mr. McFadden talk to you?

A It was quite a while.

Q Approximately how long would you say?

A This was early morning I asked to make the call. I didn't talk to McFadden until later.

Q About how long, to your best recollection?

A For three or four hours.

Q You didn't say anything to Mr. McFadden about your

having asked the turnkey to make a call, did you?

A No.

Q You didn't ask Mr. McFadden to make a call, did you?

A No.

Q You didn't ask Mr. McFadden to call a lawyer for you, did you?

A No.

Q You didn't ask Mr. McFadden about having anyone visit you, did you?

A No.

Q And you did not say anything to Mr. McFadden at all about your conversation with the turnkey about making a call did you?

A It was never brought up.

Q You didn't say anything to him, did you?

A He came to me for a specific reason.

Q My question, sir --

THE COURT: Answer the

question, did you or did you not?

A No.

Q You were asked on direct examination who you were going to call, and I believe you indicated that you were going to call your people, is that right?

A Uh-huh.

Q Then you were going to call your lawyer or your

bondsman; who is your bondsman?

A I don't have a bondsman.

Q Did you tell us you were going to call your bondsman?
To be specific, did you answer, "I was going to call my
lawyer or my bondsman"?

MR. STOKES: Objection.

Q Is that what you said?

MR. STOKES: He said a lawyer
or a bondsman.

Q When Mr. McFadden questioned you some time after that
you were taken downstairs, weren't you?

A Yes.

Q And there was a man there with a typewriter, wasn't
there?

A Yes.

Q And that man was asking you some questions and he was
typing it, wasn't he?

A Yes.

THE COURT: Speak up.

A Yes.

Q You didn't say anything to that man at that time or
Mr. McFadden at that time about calling a lawyer, did you?

A No.

Q As a matter of fact, it was not until after the com-
plete typing of questions and answers, questions by the

officers, and answers by you, and then you were given a piece of paper to read, weren't you?

A Yes.

Q And it wasn't until that time that you first mentioned a lawyer to Mr. McFadden or to the man who was there, isn't that correct?

A Yes.

Q And when you mentioned the lawyer to Mr. McFadden, or the other man who was there typing, you said to him, "I don't want to sign anything until I talk to my lawyer," isn't that correct?

THE COURT:

Speak up.

A Yes.

Q Mr. McFadden didn't force you to sign that after you told him that, did he?

A No.

Q As a matter of fact, you were permitted to go back upstairs, weren't you?

A When is this?

Q After you told Mr. McFadden you didn't want to sign anything, until you talked to your lawyer?

A They took me back upstairs, yes.

Q And you were permitted to make telephone calls, weren't you?

A No.

Q You didn't make any telephone calls?

A No.

Q At no time?

A Not going back -- not when I went right upstairs.

Q Did you make any telephone calls at any time?

A After I was charged.

Q When were you charged?

A It was I think it was the next day after we talked
I was charged.

Q When you told Mr. McFadden that you didn't want to
sign anything until you saw your lawyer -- do you remember
that?

A Yes.

Q That was right after you were given that piece of
paper to read, wasn't it?

A Yes.

Q You didn't say to Mr. McFadden at that time, "I would
like to call my lawyer," did you?

A There was something pertaining to this.

Q Answer my question. You didn't say to Mr. McFadden
at that time, and I am referring to the time when they gave
you the piece of paper to read, you didn't say to Mr.
McFadden at that time, "I would like to call my lawyer,"
did you?

A At one time I said something to him. I don't know

what time it was.

Q Listen to my question. Do you remember when you were given that piece of paper to read?

A Uh-huh.

Q And you told Mr. McFadden, "I don't want to sign anything until I see my lawyer," do you recall that?

A Yes.

Q You didn't tell him at that time that you wanted to call your lawyer, did you?

A I don't know.

Q All right, sir. Now I want to ask you this; the last regular job that you had was in 1962 and that was in Chicago, is that correct?

A Yes.

Q How long after that did you come to Cleveland?

A I stayed in Chicago, oh, six months.

Q I worked in Chicago six months and then I come to Cleveland.

Q Was that still in 1962?

A That was the latter part of 1962, yes.

Q Since coming to Cleveland in 1962 whom have you lived with?

A My mother.

Q Where have you worked?

A For my brother-in-law, for car washers and what not.

Q Have you had a steady job?

A Steady in the summer months.

Q Where were you working on October 31, 1963?

A Nowhere.

Q How long had you been out of work?

A Since the weather changed, since, you know, I worked that summer of '63.

Q When was the last time you worked in the summer of '63?

A In August.

Q From August to the 31st of October, 1963, you hadn't had any steady employment?

A No.

Q You were living with your mother?

A Right.

Q You were downtown on this particular day and you had been looking for a job, is that correct?

A Yes.

Q Where had you been looking for a job at?

A One place I went to was Mill's Restaurant. That was one place.

Q What time did you go downtown?

A It was about 10 o'clock when I got downtown.

Q You went to Mill's Restaurant?

A Not first.

Q Where did you go?

A I went to several places in the Terminal Tower.

Q Name them for me.

A There was one place had a sign, I don't remember the name of the place. It was a restaurant, on the first floor as you come in the door.

Q Name the other places you went to, 'f any.

A I went on -- I walked over to West 6th -- West 3rd St

Q What was the name of the place you went to?

A I went to -- there is a place right on the corner of West 6th and Lakeside.

Q What is the name of it?

A Ontario Printers.

Q You say you went to several places in the Terminal Tower?

A Yes.

Q Several places. name them for us?

A There were several restaurants, there were several -- they were restaurants is what they were.

Q Do you remember the names of any of them, sir?

A I remember the name of the printing shops I went to. There was a small printing shop there.

THE COURT: We are talking about the restaurants. He is asking the question about the restaurants. Do you remember the name?

THE WITNESS: No. I don't

remember the names offhand.

THE COURT:

All right.

Q Then you proceeded finally to the vicinity of 13th and Euclid, is that right?

A Yes.

Q How did you proceed there?

A I walked.

Q What street?

A Euclid Avenue.

Q Then what way did you go and where?

A I walked up to Ninth Street.

Q Yes?

A There is a restaurant there on Ninth Street, between Ninth and Prospect -- between Ninth and Euclid, between Euclid and Prospect, there is a restaurant there and I ate a sandwich there.

Q Where did you go to then?

A I walked up Euclid.

Q To where?

A In that general vicinity, to 14th Street.

Q Then where did you go?

A See, this is where I met Terry, on Ninth Street coming across the street, on Ninth, and we both had something to eat at this restaurant. Then we both walked together.

Q To where?

A Up Euclid Avenue. We were contemplating on going to a movie.

Q Where did you go to when you walked up Euclid Avenue after you met Terry?

A We walked up to where this driveway is that goes from Euclid to Prospect.

Q Go ahead.

A And it was raining, this particular day.

Q Halle Brothers Store, is that Halle Brothers Store there?

A Yes.

Q You walked through there?

A Yes.

Q Did traffic go through there?

A Yes.

Q Pedestrians?

A Yes.

Q There were quite a number of people?

A There was a moderate number of people. The alley was crowded.

Q All right. continue.

A We walked up -- they have got a display window there for men, we looked at some clothes in the window, right there on the ground floor.

Q Yes?

A And this is where back down coming toward Euclid is where we found the package.

Q And did you open --

A Where I found the package.

Q Did you open the package up?

A I did.

Q And you saw that there was what inside?

A There was something, I couldn't make out what it was when I opened it from the brown paper sack, it was something wrapped up in cellophane.

Q My question was you opened it up?

A Yes.

Q And what did you find was in the inside?

A Another bundle.

Q And did you open that?

A Yes.

Q What did you find was inside of that?

A Two pistols.

Q You found two pistols, did you take them out?

A I did.

Q And people still going through this alleyway there, weren't they?

A Yes.

Q And you took the guns out in the open?

A I took them, I put them in my pocket, both guns.

Q You took them out of the bag?

A Yes, sir.

Q And you put them in your pocket?

A Yes.

Q Did you look at them?

A Not to examine them.

Q You then found out that the guns made a bulge in your pocket, is that correct?

A With the other stuff that I had, yes.

Q And you took one of them and gave it to Terry, is that right?

A Right.

Q Now, sir, when you put the gun in your pocket, you know that that was a weapon, didn't you?

A Yes.

Q You knew that it was against the law to carry a weapon concealed, didn't you?

MR. STOKES: Objection.

THE COURT: Objection sustained.

Q Did you, sir, know that it was against the law to carry a weapon concealed?

MR. STOKES: Objection.

THE COURT: Sustained.

Q You put the gun in your pocket, is that right?

A Right.

Q Then where did you and Terry proceed to?

A Back toward Prospect.

Q Prospect or Huron, sir?

A Huron, Huron. Huron.

Q All right, in the vicinity of the Airlines office?

A Wherever you come out of the alley is, you know.

Q There is an Airline office and a jewelry store there, isn't there?

A No.

Q None there?

A Not as you come out of the department store, Halle's.

Q You walked out of there and you walked down the street didn't you?

A Yes.

Q You were standing talking in the vicinity of the airlines office and the jewelry store, weren't you?

A Right on the corner.

Q You walked away from Terry, didn't you?

A Yes.

Q When you walked away from Terry where were you going?

A Down Huron.

Q To where?

A I didn't go anywhere. I was going down --

Q Where were you going?

A I was walking down Huron.

Q To where?

A To East 4th Street.

Q All right. Then you walked back?

A I didn't walk to East 4th Street.

Q Then you walked to Terry?

A Yes.

Q After you walked back to Terry, then a white man came up to you, didn't he?

A Yes.

Q Let's go back just a moment. When you walked to the vicinity of the airlines office and the jewelry store, you walked away from Terry, you were headed towards East 4th Street, is that right?

A I was walking west on Huron.

Q And you were going where?

A To where I know a pawn shop is at, a loan, a place that loans money on articles.

Q That is located where?

A There is a place, Saul Bergerman's, on 4th and Prospe

Q Is that where you were headed?

A Yes.

Q Then you came back to Terry, is that right?

A Yes.

Q Then a white man came up to you, is that right?

A That is when I came back to Terry.

Q And what was his name?

A Karl Katz.

Q Did you know him before from previously?

A I seen him.

Q Where had you seen him?

A He works in a public place. He is the manager of a public place.

Q What kind of a public place?

A It is a bar, he is a manager of.

Q You had some conversation with him?

A Yes.

Q And the conversation you had with him was about the weapons, is that right?

A Yes, sir.

Q Did he exhibit an interest in purchasing these weapons?

A Not for himself, no.

Q Didn't you testify on direct examination that he wanted to look at them?

A Yes.

Q And that he also told you that you probably could pawn them at 4th and Prospect?

A He said, "I might be able to get rid of them for you."

Q Didn't you tell us that he mentioned the pawn shop at 4th and Prospect?

A He said he knew of a pawn shop. I knew of Saul

Bergenman's myself.

Q Then you and Terry walked away from there, to Zucker's, didn't you?

A We walked down Euclid to Zucker's.

Q And the officer came up to the three of you, didn't he?

A Right.

Q That was the officer seated here?

A Right.

Q Detective McFadden?

A Yes.

Q When he came down to Euclid, he asked you your names, didn't he? He said he was a police officer, didn't he?

A Yes.

Q And he asked you your names, didn't he?

A Yes.

Q Then he took Terry and turned him around, and Terry was facing you and Karl Katz, wasn't he?

A No.

Q He wasn't?

A No.

Q The officer was behind Terry, wasn't he?

A He was behind all of us. We were facing the window. He walked up behind us.

Q Then he said he was a police officer, and you all

turned around, didn't you, you were facing the officer then, weren't you?

A Yes.

Q Then he asked you your names, as you were facing the officer, didn't he?

A Yes.

Q All three of you?

A Yes.

Q Then the officer after he asked you your names, turned Terry around, didn't he, so that Terry was facing you and Karl Katz, isn't that a fact?

A No.

Q The officer did not turn Terry around?

A No.

Q What did he do with Terry, if anything?

A He was standing beside Terry.

Q When he was standing beside Terry what did he do with Terry if anything?

A He started patting him .

Q You indicated that there was a scuffle, didn't you?

A Yes.

Q What happened in that scuffle?

A He was trying to turn the man around.

Q Right. And then he was patting on Terry, wasn't he?

A Right.

Q And when he was patting on Terry he felt something on Terry, didn't he?

A Yes.

Q Then he reached inside after he patted on Terry, inside Terry's coat, didn't he?

A Yes.

Q And whatever was in there he couldn't get out at that time, and he then took Terry's coat off, didn't he, pulled it off of him, didn't he?

A Yes.

Q Then he ordered all three of you to go into the store, am I correct?

A No, that is not quite correct.

Q Well, you tell us, sir.

A He didn't take Terry's coat off of him until he got into the store.

Q All right. He pulled Terry's coat down?

A Yes. He had his coat off his shoulders.

Q So that it would be partially in this manner?

A Yes.

Q And did he have a hold the back of it?

A Yes.

Q And he ordered all of you -- I am sorry, let the record show and indicate that the description of the coat is off of the shoulders and partially down the arms on each

side.

He ordered all three of you into the store?

A Correct.

Q And when he ordered you into the store, you heard the officer specifically say to someone, "Call the wagon," did you?

A No.

Q You didn't?

A No.

Q Did the officer say anything?

A Yes.

Q What did he say?

A He told all of us to face the counter.

Q After he told you to face the counter, then you heard him say to someone, "Call the wagon," didn't you?

A No.

Q When did you hear -- did you hear the officer say, "Call the wagon"?

A Yes.

Q Didn't you testify on direct examination that after officer had you go into the store, and face the counter, you heard him say to someone "Call the wagon"?

MR. STOKES: Objection. That is not the testimony.

MR. PAYNE: Of course, I am

asking did he say that.

THE COURT: With all deference to you, I don't know if it is on the record or not, but if he did not say it he can say he didn't say it.

If he did say it he can say he said it.

Do you recall saying it?

THE WITNESS: What was the question?

THE COURT: Read the question.

(Following question was read by the reporter:)

"Didn't you testify on direct examination, that after the officer had you go into the store, and face the counter, that you heard him say to someone 'Call the wagon'?"

MR. STOKES: I am going to object to that question.

THE COURT: Overruled. He may answer if he recalls.

A How do I answer it. yes or no, or can I answer it way --

THE COURT: Do you recall making that statement before?

THE WITNESS: Before?

THE COURT: Yes.

THE WITNESS: Not before, no.

He made the statement after he searched Karl Katz.

This is when he made the statement.

Q Were you all three with your hands in the air?

A Yes.

Q Then the officer came up to you, didn't he?

A Yes.

Q And when he came up to you he patted on you, didn't he?

A Yes.

Q And he patted you on the outside and down in this manner, didn't he?

A Yes.

Q And when he patted down to your -- you had on an overcoat, didn't you?

A Yes.

Q When he patted down to your overcoat he felt something in your overcoat, didn't he?

A Yes.

Q That something that he felt was in the pocket of the coat, wasn't it?

A Yes.

Q It was not out in sight, was it?

A In sight?

Q Yes.

A No.

Q In other words, it was completely inside the pocket of that overcoat?

MR. STOKES:

Objection.

THE COURT:

He may answer.

A Was it completely in the pocket?

Q It was completely in the pocket of that coat?

A It was completely in the pocket of the coat.

Q And the officer couldn't see it, could he?

A I don't ^{know} if he could see it or not. It was in the pocket of the coat. I don't know whether he could see in the pocket of the coat or not.

Q When he felt that item he then after feeling that item put his hand in your pocket, didn't he?

A Yes.

Q And when he put his hand in your pocket he took out a gun, didn't he?

A Yes.

Q He took out State's Exhibit 1, didn't he?

A Yes.

Q When he took out State's Exhibit 1, he took these shells from out of State's Exhibit 1, these cartridges, didn't he not?

A I don't know if he did or not.

Q These cartridges were in the gun that was in your coat weren't they?

A I don't know. I didn't know it until I got to the police station that the gun was loaded, that the guns were loaded. That is when they took the bullets out of the gun, at the police station.

Q You do consider that as a weapon, do you not?

MR. STOKES: I am going to object.

THE COURT: Objection sustained.

Q You had State's Exhibit 1 concealed on your person, didn't you?

A Yes, I had it in my pocket.

MR. PAYNE: That is all.
Thank you.

THE COURT: Anything further,
Mr. Stokes?

MR. STOKES: You may step down. If your Honor please, at this time we renew all motions heretofore made which were overruled by the Court.

THE COURT: At this time the Court again denies your motions previously made, and you may have your exceptions.

I presume you are finished with
your testimony?

MR. STOKES: At this time,
we rest, your Honor.

- - - -

THEREUPON THE DEFENDANT RESTED.

- - - -

MR. PAYNE: No rebuttal
testimony, your Honor.

- - -

THEREUPON THE STATE OF OHIO RESTED.

TESTIMONY CLOSED.

- - -

THE ABOVE AND FOREGOING, TOGETHER WITH
THE EXHIBITS OFFERED AND RECEIVED IN EVIDENCE, WAS
ALL OF THE EVIDENCE OFFERED AND RECEIVED, UPON THE
TRIAL OF THE ABOVE CAUSE ENTITLED STATE OF OHIO VS.
RICHARD D. CHILTON, BEING CASE NUMBER 79,432, IN
SAID COURT OF COMMON PLEAS, CRIMINAL BRANCH, IN AND
FOR CUYAHOGA COUNTY, OHIO.

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THE COURT: The Court will give you an opportunity, however, to argue this particular question.

MR. PAYNE: The State will waive its opening argument, your Honor.

THE COURT: I want you to have an opportunity to argue, Mr. Stokes, and we will hold it in abeyance, the argument, until we can proceed with the other case, when I find out from you tomorrow as to how long you will be detained in Federal Court tomorrow; is that agreeable?

MR. STOKES: Judge, on the question of argument, I am confronted with this --

THE COURT: Are you willing to waive argument, too?

MR. STOKES: Judge, I see no point in argument. I think argument is for when there is some possibility of convincing the Court.

THE COURT: Well, the Court has a mind that is flexible, and if you have had success in swaying people you might possibly sway the Court, too, I don't know.

However, if there is no particular

hurry at this moment for the Court to make a decision, I want you to think it over, as far as any argument. You may come up with something that you might feel should be brought to the Court's attention, and in light of the fact we want to go ahead with the other case involved here.

MR. PAYNE: I would think so, your Honor, if view of the hour.

THE COURT: So notify Mr. Payne tomorrow as to when we can resume in the other case.

Adjourn court until 9:15 tomorrow morning.

(Thereupon an adjournment was taken to 9:15 Wednesday, September 30, 1964.)

Friday Morning Session, 9:15 a.m., October 2, 1964

THE COURT: I believe when we left off I raised the question whether counsel desired to argue, and there was an indication by the prosecuting attorney that he would waive argument.

MR. PAYNE: Yes, your Honor.

THE COURT: And Mr. Stokes indicated that he would waive, and I suggested that he have a little time to think it over and he might change his mind.

So what is now your position, Mr. Stokes?

MR. STOKES: Your Honor, we might offer the Court some brief argument.

THE COURT: All right.

(Thereupon, counsel for the respective parties made their closing arguments to the Court.)

THE COURT: Gentlemen, I will tell you what I will do. I will hold my decision in abeyance until we dispose of this other case. So can we proceed? Do you want to take a five-minute recess?

MR. STOKES: Yes, your Honor.

(Thereupon a recess was had.)

THE COURT: Are you ready to
proceed in the other case?

MR. PAYNE: Yes, your Honor.

Proceedings in re: State of Ohio vs. John W. Terry,
Case No. 79,491.

MR. PAYNE: Your Honor, we have
before the Court at this time consideration of case
number 79,491, State of Ohio vs. John W. Terry,
who is charged with the offense of carrying concealed
weapon. The indictment reads as follows:

"Indictment for Carrying Concealed Weapon,
Revise Code 2923.01. State of Ohio, Cuyahoga County.
In the term of September, in the year of our Lord
one thousand nine hundred and sixty-three, the jurors
of the Grand Jury of the State of Ohio, within and
for the body of the county aforesaid, on their oaths,
in the name and by the authority of the State of Ohio,
do find and present that John W. Terry on or about
the 31st day of October, 1963, at the county afore-
said, unlawfully and feloniously carried and concealed
on or about his person a certain dangerous weapon,
to wit, revolver, contrary to the form of the statute
in such case made and provided, and against the peace
and dignity of the State of Ohio."

Signed by the prosecuting attorney, John T. Corrigan.

To this indictment, it is my understanding, the defendant has entered a plea of not guilty; is that correct, Mr. Stokes?

MR. STOKES: May we do this, your Honor, prior to entering the plea, may we renew at this time the motion to suppress which has heretofore been filed in this matter?

THE COURT: I don't think it will be necessary to have any argument on it?

MR. STOKES: No, Judge.

THE COURT: The motion is overruled.

MR. STOKES: Now, at this point, your Honor, we will enter a plea of not guilty.

MR. PAYNE: If it please the Court, there is a stipulation between counsel for the State and counsel for the defendant, that all of the testimony which has previously been given in the case of the State of Ohio vs. Richard D. Chilton by Detective McFadden, the arresting officer here, may be fully incorporated into the case of John W. Terry as though it was fully testified to from the stand under oath; with the additional stipulation to the Court that after Detective McFadden observed

these men in front of the area of the Diamond Store, or Airline Office, and after they had left that area and gone to the area of Zucker's on Euclid Avenue, that he approached them, asked for identification, in which something was said by each of them, at which time he then turned the defendant Terry around, patted him down, Terry having on an overcoat and a suitcoat, and in patting him down felt an object in the upper region of the left breast pocket;

That thereupon feeling the object which felt in the nature of a weapon, that he reached in under the overcoat into the upper breast area pocket of the coat, inside pocket of the coat, your Honor, and removed from the inside pocket of the coat a revolver containing a clip, and seven shells, which will be marked for purposes of identification as State's Exhibit 3.

(State's Exhibit 3 was marked for identification by the reporter.)

THE COURT: It may be received.

MR. PAYNE: I haven't finished the stipulation.

MR. STOKES: Go ahead.

MR. PAYNE: That it may be

received --

THE COURT: Well, I am a little ahead of myself.

MR. PAYNE: Well, it is offered into evidence, and there is an objection by counsel for the defense as to its admission into evidence. There is an objection by counsel for defense as to its admission which we will ask the Court to rule on in view of the stipulation as to the other facts.

It is further stipulated that the officer would testify that the weapon was concealed in the inside pocket of Terry, that he removed the same, and that subsequently the defendant Terry was arrested and charged with the offense of carrying concealed weapon, which he is on trial here for at this time; and that the offense was committed in the State of Ohio, County of Cuyahoga, and City of Cleveland.

THE COURT: As testified by Detective McFadden?

MR. PAYNE: Yes, as testified by Detective McFadden.

MR. STOKES: We will enter into those stipulations which have just been enunciated by Mr. Payne, your Honor.

THE COURT: But you are objecting

to the introduction of State's Exhibit 3?

MR. STOKES: Yes, that's correct.

Is it 3-A, too?

MR. PAYNE: I just marked it all
Exhibit 3.

MR. STOKES: I see.

THE COURT: The Court will accept
the stipulation as agreed to by counsel for defendant
Terry. And the Court at this time will accept into
evidence State's Exhibit 3, which constitutes the
revolver and the seven bullets.

MR. PAYNE: And the clip.

THE COURT: And the clip.

You may have your exception.

MR. STOKES: Yes, your Honor.

MR. PAYNE: With those agreed
stipulations, your Honor, having been entered into,
the State would rest its case at this time.

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THEREUPON THE STATE OF OHIO RESTED

- - -

THE COURT: Mr. Stokes?

MR. STOKES: If your Honor please,
then, we would at this time renew all the motions
made by the defense in this matter.

THE COURT: And the Court overrules your motions, in connection with the search and seizure, and for directed verdict, I presume that you have in mind, is that correct?

MR. STOKES: Yes. Let's see, we did not make a motion for directed verdict --

MR. PAYNE: I believe that it was --

MR. STOKES: --in the other case.

THE COURT: I am quite sure you did in the other case.

MR. STOKES: Well, for the record, let's say this, at this point we would move for directed verdict of acquittal for the defendant, and we would further move, your Honor, to renew all of the motions heretofore made and overruled by the Court in this matter.

THE COURT: All right. Motion is overruled, with exceptions to the defendant.

Anything further, Mr. Stokes?

MR. STOKES: Then, if your Honor please, the defense would rest, also.

- - -

THEREUPON THE DEFENDANT RESTED.

TESTIMONY CLOSED.

THE ABOVE AND FOREGOING, TOGETHER
WITH THE EXHIBITS OFFERED AND RECEIVED IN EVIDENCE,
WAS ALL OF THE EVIDENCE OFFERED AND RECEIVED, UPON
THE TRIAL OF THE ABOVE CAUSE ENTITLED STATE OF OHIO
VS. JOHN W. TERRY, BEING CASE NUMBER 79,491, IN
SAID COURT OF COMMON PLEAS, CRIMINAL BRANCH, IN AND
FOR CUYAHOGA COUNTY, OHIO.

- - -

THE COURT: I don't believe
there would be any need for any further arguments
in light of the fact that you have argued so
strenuously and so eloquently, each of you, unless
you so desire.

MR. STOKES: No, Judge.

THE COURT: In that case, the
Court will recess for one-half hour so I can go
over the facts in this case.

MR. PAYNE: Your Honor, Mr.
Stokes is due in Juvenile Court at eleven o'clock,
I understand.

THE COURT: In light of that
fact, supposing you return here at two o'clock,
and the Court will make its ruling in both cases
at two o'clock.

MR. STOKES:

That will be

fine, Judge.

- - -

(Thereupon an adjournment was taken to 2:00 p.m., Friday, October 2, 1964, at which time the following proceedings were had:)

- - -

Friday Afternoon Session, 2:00 p.m., October 2, 1964

COURT'S FINDING

FRIEDMAN, J.:

Gentlemen, in light

of the fact that the testimony as adduced in court relating to Robert Chilton was by stipulation agreed to between both counsel for the State and counsel for the defendant, as being the testimony of John W. Terry, with the exception of one item which counsel took exception to, the introduction of State's Exhibit 3 which is the pistol, the chamber, and the bullets -- is that correct?

MR. PAYNE:

That's correct, your

Honor.

THE COURT:

Therefore, my de-

cision will be relating as to both defendants, making it such.

The two defendants have been charged with violation under Section 2923.01 relating to concealed weapons. That section provides and reads as follows; and I will read it verbatim, the pertinent part thereof:

"No person shall carry a pistol or other dangerous weapon concealed on or about his person."

And then it has a provision pertaining to exceptions, and the exceptions do not apply in this particular case.

The elements required under this section of the statute for the State to prove its case beyond a reasonable doubt are to knowingly have concealed on or about his person a pistol; and the venue.

Since the defendants had waived a jury and have tried this matter before the Court, it is incumbent upon me to evaluate the testimony and determine if the State has proved its case beyond a reasonable doubt whether the defendants have violated the law as prescribed by statute.

What is the testimony in this case?

Detective McFadden, a member of the Cleveland Police Department for 39 years, a detective for approximately 35 years, assigned to the downtown district

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for many years, specialized in the field of observing shoplifters and pickpockets, on or about the 31st day of October, 1963, while on Euclid Avenue observed suspicious conduct of the defendants Chilton and Terry, and a fellow by the name of Karl Katz, in the areas of East 13th and Euclid and Huron, and also in the area of approximately E. 12th Street and Euclid.

He testified that either the defendant Chilton or Terry would walk up to a jewelry shop or United Airlines store, look around it, come back, and consult with each other.

Then the other person would do the same. This continued for approximately five to six times, as I recall the testimony.

After doing so for about ten to fifteen minutes they walked towards 11th or 12th Street and Euclid, at the location of Zucker's Men's Shop, and met there with a fellow by the name of Karl Katz and conversed with that gentleman.

That was the time when Detective McFadden decided to approach the defendants for the purpose of interrogation and determine what they were up to, and he identified himself when he approached them as a police officer.

That he made the defendant Terry turn around, patted him, discovered a gun in his pocket while patting him down.

That he ordered all three persons into Zucker's store, patted each one down, discovered a gun in the left-hand pocket of the defendant Chilton, which gun was not observable, and removed the same. Each of the guns were loaded.

He called the wagon, took them to jail, and placed them on a charge of investigation.

The defendant Richard Chilton, which the Court has to take, is the testimony of defendant Terry, also, in light of the stipulation.

Richard Chilton is 27 years of age. He has testified that he is a printer by trade, was married, has been divorced, has worked for the Grand Printing Company from 1953 to 1961; that he lives with his mother, and that he is not presently employed. He has never been arrested before.

That he got downtown early in the morning and was looking for a job. He went to several restaurants and printing shops, but was rather hazy about the places he went to.

That he met John Terry at East 9th and Euclid; that in the alley between Prospect and Euclid

Avenue separating the Halle's store, he found a bag containing two guns. He unwrapped the bag, put both pistols in his pocket. When he found his pocket too bulky he gave one of the guns to the defendant Terry; that he was on his way to sell or pawn the gun when he was stopped. This is the testimony of Chilton.

That the officer patted him down, and found a gun inside his left coat pocket.

The testimony in this case, as I have stated, is that at the present time he is unemployed, that the last regular job he had was in 1962 in Chicago where he worked for six months, and he came to Cleveland in August of 1962 to work temporarily as a car washer and has no steady employment.

As I said, the testimony of Terry would have to be the same as to the surrounding circumstances, save and except as to employment and as to the places where he lives..

In light of the facts before me, and in view of my decision which was so strenuously and eloquently argued by counsel for the defendants -- I want to commend you, Mr. Stokes --

MR. STOKES: Thank you, your Honor.

THE COURT: And I sincerely meant that your argument which you presented to the Court

was as eloquent an argument that I have ever heard from a counsel representing an individual, and I am quite sure that Chief Justice Potter Stewart of the Supreme Court, if you would argue the same way he probably would commend you in the same manner.

MR. STOKES: Thank you, your Honor.

THE COURT: And that goes for you, too, Mr. Payne.

MR. PAYNE: Thank you, your Honor.

THE COURT: Don't take it so nonchalantly. I am sincere in saying it, both of you represented your respective sides in a very fine manner.

Considering the facts as stated, and in light of my decision, I can see no other alternative save and except to find each of the defendants guilty of the crime as charged of carrying a concealed weapon.

Will the defendants and their counsel step forward.

Mr. Stokes, on behalf of Mr. Chilton, do you care to make any statement?

MR. STOKES: If your Honor please, I would make this request to the Court, that the Court defer passing this matter for sentence until

such time as we have had an opportunity to file a motion for new trial before this Court.

THE COURT: I will not go along with your request as to one of the defendants. But I had in mind, I think this thing has been hashed out. It was tried to a Court. It might have been different if tried to a jury, but in light of the fact that the matter was submitted to the Court, and having heard all of the testimony, and all of the argument, I am of mind that a motion for a new trial at this time, as far as holding in abeyance or passing sentence, the Court will not go along with you.

MR. STOKES: Well, Judge, in light of the urging of the Court with respect to wanting to see this matter taken up for review, I would want to be able to consult with my clients with respect to what possibilities there are for them to take the matter up for review, and I would hope that in the interim period that we might have some opportunity to have these men remain on bond pending the appeal in this matter, for the reason that such review will in all probability take a great deal of time; and in the event, let us say, that we were successful in the appeal, and this man

were remanded, we would be in the very perilous position of these men having served time for something which --

THE COURT: Well, let me put it this way, as far as Terry is concerned, I want to make myself clear. I have gone over the whole situation, I have gone over his record. I think the community would be safer if he were sentenced right now, and I am going to do so, and if there is any question that he wants to get out on bond, he can go to the Court of Appeals for that.

As far as Chilton is concerned, in light of the fact that he has no record at all, although I did not believe his testimony, and I am honest about it, I think he has endeavored to take the Court over, and I am sure he endeavored to take you over, he comes in with a fantastic story that he was walking along an alley and finds two loaded guns.

To me it is an obvious case of not telling the truth, and putting it lightly. I was at the point of doing something in that connection. But I considered it calmly and coolly, and I have made my decision in that case.

As to Chilton I will refer this matter to the Probation Department for pre-sentence report.

As to Terry, I will sentence him to the Ohio Penitentiary for the term prescribed by statute. If he wants bond, he can go to the Court of Appeals.

MR. STOKES: Judge, may I further be heard? With respect to Chilton, I have no objection to the Court making this referral, but I would appreciate it if the Court would consider letting him remain on bond pending the probation report. And then with respect to Terry, I realize this man has a record that this Court must take into consideration. I also want to urge upon the Court this consideration, in this instance these guns were not used. These men did not give the police officer a difficult time at all.

There was no testimony that they in any manner resisted arrest, or did anything but submit completely, and we of course have to surmise from this evidence, that if we are going to take the testimony of the officer, that something he felt was going to be committed, but we know this, nothing was ever committed, and these guns were not tied in with anything illegal, and I would ask --

THE COURT: Mr. Stokes, it would take one second to use a gun, and you have observed

and seen and you can take notice that many people are robbed, and many people are killed, with the use of a gun. It was fortunate in this case that the crime was prevented, in my estimation.

MR. STOKES: The only thing I want to urge upon the Court was in view of the facts which I have attempted to set forth to the Court, would the Court consider the other provision in the statute for Workhouse sentence as opposed to a penitentiary sentence?

I would feel that under the circumstances where they did nothing to this police officer, they submitted, there has been no crime, for the Court to consider sentencing this man to the Workhouse for six months.

MR. PAYNE: There is a matter I want to bring to the Court's attention and to clarify between the Court and Mr. Stokes. I presume for purposes of clarifying, if the Court would act on Mr. Stokes' request in reference to Chilton, I believe -- is he the one being referred to probation?

MR. STOKES: That is Chilton.

MR. PAYNE: And act on his request and leave him remain out on bond pending the probation report, and perhaps we can dispose of the other matter.

here, and this is a question I want to raise with Mr. Stokes and the Court, for purposes of clarification.

THE COURT: Well, I have stated as far as Chilton is concerned, I am referring him for pre-sentence report, and will permit him to remain on -- what is the bond he is on?

MR. STOKES: Five thousand, Judge.

THE COURT: All right, he may remain on the same bond.

MR. STOKES: Thank you.

MR. PAYNE: All right. sit down for a minute, Chilton.

Now, I presume, the question I want to raise for clarification with Mr. Stokes and with the Court, would not be applicable until such time as the Court decides on the sentencing of the matter one way or the other, which he is going to do with reference to that, because there is a serious question I want to raise when that is disposed of.

THE COURT: I don't know what you have in mind. I am going to sentence Mr. Terry.

MR. PAYNE: Your Honor, I didn't understand Mr. Stokes' motion completely, in this respect, having in mind what the Court has said, I didn't know whether Mr. Stokes' motion was two-fold,

whether he was requesting bond and stay of execution of any sentence that the Court may impose.

If his motion is in two parts, I don't think the Court understood it to be in two parts, but I do have that question in my mind, because as a matter of stay of execution I think he would be entitled to that as a matter of right.

As to the question of bond, He would not. That would be a discretionary matter with the Court here, and I raise this for the Court's clarification at this time, with reference to the Court passing on the matter.

THE COURT: On what basis he is entitled as a matter of right to stay of execution?

MR. PAYNE: He is entitled as a matter of right, your Honor, for a stay of execution-

THE COURT: Pending the filing of an appeal.

MR. PAYNE: --pending the filing of an appeal and pending the perfecting of the appeal.

The question of bond is solely discretionary. That stay of execution may be right here, if the Court decides. That is why I say the question of bond is discretionary, and I didn't know whether Mr. Stokes' request was two-fold in that respect,

and I simply wanted to clarify it so there would be no mistake or error in the consideration of his request.

MR. STOKES: Actually, what it was. I think I perhaps did not make it clear to the Court, for this reason, I started out requesting a stay for purposes of filing my motion, which the Court immediately denied, and then the Court I believe was about to pass sentence, and at that point --

THE COURT: All right, you are making a motion for stay of execution?

MR. STOKES: Yes, your Honor.

MR. PAYNE: I think, your Honor, we better not consider that until such time as sentence is imposed.

MR. STOKES: The Court would have to pass sentence, but I would want the Court to consider in passing the sentence my request --

THE COURT: For the workhouse. I regret that I cannot concur with you in the workhouse sentence. I think that section which provides for the alternative, workhouse institution sentence, has given to the Court discretion in a situation which involves certain circumstances. The circumstances for a workhouse sentence are not there as far

as Terry is concerned, I sincerely regret it, although I admire you for requesting it for your client, but I cannot in that direction go along with you.

It is the order of the Court that Terry -- is there anything you care to say, Mr. Terry, before the Court pronounces sentence?

DEFENDANT TERRY: No, sir.

MR. STOKES: Judge, may I make one further observation? I am confronted with a situation that this Court is about to pass sentence. It disturbs me to some degree as a lawyer. At the beginning of this trial we could have, of course, avoided a trial and entered a plea in this matter.

Being conversant with the facts in this matter, I realize that if this evidence was permitted in, that there was but one verdict to be arrived at, and that is the verdict of guilty.

Consequently I approached this trial as I approach any other, trying to think of what is best for the defendant.

We then considered filing a motion, and considered what the effects of having the motion overruled would be, and we considered what the effect perhaps might be of entering a plea, saving the Court the time of a trial, and making a plea for mercy

and leniency to the Court.

Once we got into the motion and had the motion heard. we could have at that point avoided trial. We still had the opportunity to enter a plea.

We felt at the urging of the Court that there was a great deal of merit to the Court's suggestion that this area of law be explored further for good of the entire community.

Of course, at that point we did not again yield to some temptation to at that point ask for mercy of this Court with a plea.

And now I find myself having attempted to indulge in the suggestions of this Court, and I would hate to feel that having done so that I may have caused this defendant to have been denied some consideration which he might have been afforded had a plea been entered here.

THE COURT: He would not have been afforded any other consideration. Let me say this to you, Mr. Stokes, in all honesty. Of course, during the course of a trial the Court cannot take into consideration, as far as the jury is concerned, anything save and except conviction of felonies or State violations, that are admissible in evidence.

But in considering the question what to

do, once he is found guilty, the Court can take into consideration every element of conduct of the individual during his entire lifetime to determine what is best for the community, what is best for the individual. And he has a sorry record all the way through, although there is only a conviction or two in the record. Yet the entire record when you add it up, he has been picked up consistently in all kinds of crimes.

The mere fact that he has been released does not mean that he was not involved; probably in some instances there was not sufficient evidence presented to the grand jury.

But here is a man who has from December 30, 1948, to the present time, being consistently involved in difficulties with the law, and it is my personal observation here is a man who has no record who is seduced or induced to partake in a crime. The community here is entitled to some consideration, and that is one of the reasons why I have decided in this instance to do what I am doing.

I know this much, you are going to make a request for stay of execution, which the Court will consider and grant you that, but the Court is under no obligation to place him under bond. If the Court

of Appeals disagrees with me, they certainly will grant him a stay, or release him on bond.

But I have felt, and I feel that what I am doing is right in this case.

I didn't hesitate to do what I did in the other individual, because there isn't a record, and I don't think I would be harming the community, and I sincerely hope that this will be a lesson to Chilton to behave himself and conduct himself the way he can conduct himself, and the way he has conducted himself until such time as he was picked up and found with a loaded gun.

I appreciate your plea on behalf of your client, but thank God I have worked with my own conscience in determining what is right and what is wrong, and this is my decision.

Now, you are asking for a stay of execution, is that correct?

MR. STOKES: I would like a stay of execution.

MR. PAYNE: I don't think the sentence was completed, I don't think.

THE COURT: I have sentenced him to the Ohio State Penitentiary for the period prescribed by statute.

MR. STOKES: Now we would request
a stay of that, your Honor.

THE COURT: Pending bail?

MR. STOKES: Pending the filing
of a notice of appeal. Do I understand this Court
will not consider bond, that we should consider
making application to the Court of Appeals?

THE COURT: That's right, to
the Court of Appeals, and if they find he is
entitled to bond --

MR. PAYNE: May I, for the
purposes of the record, have the Court's specific
expression on the two motions, the one as to the
stay, and the one as to the bond.

THE COURT: I have stated that
I am granting the stay of execution, pending the
appeal.

MR. PAYNE: And the bond situation?

THE COURT: And the bond is
denied, and the defendant is committed.

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